

File 1

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I

IN THE MATTER OF:

BENNINGTON LANDFILL SUPERFUND SITE
Bennington, Vermont

Banner Publishing Corporation, Town of
Bennington, Bennington Iron Works, Inc.,
Bijur Lubricating Corporation, Chemical
Fabrics Corporation, Courtaulds Structural
Composites, Inc., East Mountain Transport,
Environmental Action, Inc., Eveready Battery
Corporation, G.C.D.C., Inc., Johnson
Controls, Inc., Textron, Inc.,

Respondents

Proceedings relating to a settlement
agreement under Section 122(d)(3) for action
under Section 104(b) of the Comprehensive
Environmental Response, Compensation and
Liability Act, as amended, 42 U.S.C. §§
9604(b), 9622(d)(3)

U.S. EPA Region I
CERCLA Docket No.
I-91-1093

Superfund Records Center
SITE: BENNINGTON
BREAK: 10.7
OTHER: 527 528



SDMS DocID 527528

ADMINISTRATIVE ORDER BY CONSENT
FOR REMEDIAL INVESTIGATION/FEASIBILITY STUDY

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JURISDICTION

1. This Administrative Order by Consent (Order) is entered into voluntarily by and between the United States Environmental Protection Agency (EPA) and all of the Respondents listed in the caption above (hereinafter "the Settling Parties"). The Order concerns the preparation of, performance of, and reimbursement of oversight costs for the Remedial Investigation and Feasibility Study (RI/FS) for the Superfund Site known as the Bennington Landfill Superfund Site (the Site) in Bennington, Vermont. This Order is issued pursuant to the authority vested in the President of the United States by Sections 104 and 122(d)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA), 42 U.S.C. §§ 9604, 9622(d)(3), which authorize the President to issue an Order setting forth the obligations of the Settling Parties with respect to a settlement agreement for action under Section 104(b) of CERCLA. This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2926 (January 29, 1987), and further delegated to the Regional Administrator on September 13, 1987, by EPA delegation No. 14-14-C. Under this Order, the Settling Parties agree not to contest the authority or jurisdiction of the Regional Administrator to issue this Order in any subsequent proceeding to enforce the terms of this Order, but expressly reserve their rights to contest the authority or jurisdiction to issue any other or subsequent order.

PARTIES BOUND

2. This Order shall apply to and be binding upon EPA and the Settling Parties, their agents, successors, and assigns, and upon all persons, contractors, and consultants whom the Settling Parties have authorized to act on their behalf to perform the RI/FS. No change or changes in the ownership or corporate status of any of the Settling Parties shall in any way alter the Settling Parties' responsibilities under this Order. Each Settling Party shall provide a copy of this Order to any subsequent owners or successors before ownership rights are transferred. The Settling Parties shall be jointly and severally liable for the performance of the activities specified in this Order and for penalties arising from this Order. The signatories to this Order certify that they are authorized to execute and legally bind the parties they represent.

3. The Settling Parties shall provide a copy of this Order to their contractor ("Contractor") within fourteen (14) days after the effective date of this Order or after the date of such retention, whichever is later. Notwithstanding the terms of any contract, the Settling Parties are responsible for compliance with this Order and for ensuring that their contractors and agents comply with this Order. Any reference herein to the Order shall mean this Order, any appendix thereto including any future modifications as provided by the terms of this Order as may be added hereafter, including any reports, plans, specifications, schedules, and appendices required by this Order which, upon

approval of EPA, shall be part of and be enforceable under this Order.

STATEMENT OF PURPOSE

4. In entering into the Order, the mutual objectives of EPA and the Settling Parties are: (i) to determine by conducting a remedial investigation the nature and extent of contamination and any threat to the public health, welfare, or the environment caused by the release or threatened release of hazardous substances, pollutants, or contaminants from the Site; and (ii) to determine and evaluate alternatives for remedial action (if any) by conducting a feasibility study to prevent, mitigate or otherwise respond to or remedy any release or threatened release of hazardous substances, pollutants, or contaminants from the Site.

5. The activities conducted under this Order are subject to approval by EPA as set forth in Paragraphs 26 - 28 of this Order and shall provide all necessary information for the Remedial Investigation/Feasibility Study and for a Record of Decision that is consistent with CERCLA §§ 104, 121, and 122, and the National Contingency Plan (NCP), 40 CFR Part 300.

FINDINGS OF FACT

6. The Bennington Landfill Superfund Site (the "Site") is located in Bennington County off of Houghton Lane on East Road in the Town of Bennington, Vermont. The Site, an approximately ten-

acre municipal landfill, is situated on twenty-eight (28) acres north of Houghton Lane, and is bordered by an area of low-density residential development along Houghton Lane to the south, by a rural residential area and apple orchard to the west, by a sand and gravel pit to the north, and by a wetland area to the east where Hewitt Brook originates.

7. The landfill was established pursuant to the Town of Bennington's obligation to provide disposal facilities under Title 24 § 2202 of the Vermont Statutes Annotated, and began operation in June 1969, receiving residential, commercial and industrial wastes. The Town of Bennington leased the Site property for use as a landfill until 1985, at which time it purchased the Site property from Alden Harbour. In April 1987, the landfill closed, and is presently utilized only for transfer, recycling, and sorting operations.

8. Throughout the entire period 1969-1987, residential, commercial and industrial liquid and solid wastes were disposed of in the landfill. During the period 1969 to 1975, liquid wastes from several Bennington-area industries were disposed of in an unlined lagoon at the Site. The Town of Bennington discontinued use of the lagoon in 1975, due to concerns raised by the State of Vermont regarding the threat to drinking water supplies posed by contamination migrating from the Site. After attempts to solidify the liquids within the lagoon failed, it was covered with landfill material.

9. A buried drainage system constructed in 1976 was designed to lower the groundwater level under the landfill in order to control the migration of contaminants from the Site. This drainage system discharges through a culvert into an unlined ponded area on the eastern side of the Site. In August 1986, the Vermont Agency of Environmental Conservation (Vermont AEC) collected groundwater samples from monitoring wells located throughout the Site and water samples from the culvert. Analysis of those samples revealed the presence of PCBs, lead, arsenic, benzene, and ethylbenzene, as well as other contaminants. The concentration of several contaminants exceeded Maximum Contaminant Levels established under the federal Safe Drinking Water Act.

10. In May 1989, EPA personnel conducted a site assessment of the Site, during which they collected soil and water samples. Analyses of those samples revealed many of the same contaminants as those detected by the Vermont AEC; moreover, the concentration of contaminants were comparable to the Vermont AEC findings.

11. Potential receptors for the contaminants migrating from the Site include: wetlands, streams, and drinking water supplies.

12. Pursuant to Section 105(8)(b) of CERCLA, 42 U.S.C. § 9605(8)(b), the Site was proposed for inclusion on the National Priorities List (NPL) published by the Administrator of EPA in the Federal Register on June 24, 1988 (53 Fed. Reg. 23,978). The

Site was finally listed on the NPL on March 31, 1989 (NPL final rule update # 5, 54 Fed. Reg. 13,295).

13. By letter dated March 18, 1991, EPA issued a Notice of Potential Liability and Special Notice pursuant to Section 122 of CERCLA to the following twenty-seven (27) parties on the bases set out below:

a. The Town of Bennington is an incorporated political division in the State of Vermont. The Town of Bennington is linked to the Site by reason of its present ownership and operation of the Site and its operation of the Site at a time when hazardous substances were disposed of at the Site.

b. In 1970, Thressia Harbour conveyed the Site property to Alden Harbour and Marion Harbour by warranty deed, while retaining a life estate in the property for herself. Between 1969 and 1979, the Town of Bennington leased the Site from Thressia Harbour. In 1979, a lease extension was entered into between the Town of Bennington and Thressia Harbour, Alden Harbour, and Marion Harbour. Alden Harbour became the sole owner of the Site in 1982 upon the death of Marion Harbour. Alden Harbour, now deceased, is thus linked to the Site by reason of his ownership of the Site at a time when hazardous substances were disposed of at the Site.

c. ADD, Inc., Arken Industries, Inc., Banner Publishing Corporation, Ben-Mont Corporation, Bennington Iron Works, Inc., GC/DC, Inc. (formerly Bennington Iron Works, Inc.), Bennington Potters, Inc., Bijur Lubricating Corporation, Catamount Dyers, Inc., Chemical Fabrics Corporation, Courtaulds

Structural Composites, Inc., Eveready Battery Company, Inc., Jard Company, Johnson Controls, Inc., Lauzon Machine and Engineering, Inc., Monument Plastics Machining, Inc., Textron, Inc., and Vermont Tissue Paper Corporation are linked to the Site by reason of their having arranged, or their having a corporate relationship with a person that arranged, for the disposal of hazardous substances at the Site.

d. Harry F. Andrews, Bernard Bourgeois, Church Septic Tank Service, East Mountain Transport, Environmental Action Waste, Inc., Jack Sweet, and Tom Sweet are linked to the Site by reason of their having accepted, or their having a corporate relationship with a person that accepted, hazardous substances for transport to the Site.

EPA'S DETERMINATIONS

14. On the basis of the Findings of Fact, EPA has determined that:

- a. Each Respondent is a "person" as that term is defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
- b. Each Respondent is a liable party within the meaning of Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and a "potentially responsible party" within the meaning of Section 122(d)(3) of CERCLA, 42 U.S.C. § 9622(d)(3).
- c. The Site is a "facility" as that term is defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

- d. Each substance listed in Paragraph 9 above is a "hazardous substance" as that term is defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).
- e. The past, present or potential future migration of hazardous substances at or from the Site constitutes a "release" or substantial threat of a release into the "environment" within the meaning of Sections 101(8), (22) and 104(a) of CERCLA, 42 U.S.C. §§ 9601(8), (22) and 9604(a).
- f. It is necessary, in order to protect the public health and welfare and the environment, to conduct an RI/FS to determine the full nature and extent of contamination that exists at or near the Site and to determine what remedial actions are necessary to be carried out under Sections 104 and 122 of CERCLA or secured through enforcement action under Section 106 of CERCLA.
- g. The RI/FS will be done properly and promptly by the Settling Parties, in accordance with Sections 104(a)(1) and 122(a) of CERCLA, provided that the Settling Parties perform all actions in accordance with the terms of this Order and Attachment A (the Statement of Work) and any modifications thereto.
- h. The actions called for in this Order will be consistent with the NCP to the extent that the NCP is consistent with CERCLA, provided that the Settling Parties perform all such actions in accordance with the terms of this

Order and the Statement of Work and any modifications thereto.

- i. The Settling Parties are qualified to conduct the RI/FS, in accordance with Section 104(a)(1) of CERCLA, if the Settling Parties engage a qualified contractor pursuant to Paragraph 18 of this Order.
- j. EPA will arrange for the oversight and review of the RI/FS by qualified EPA personnel and qualified contractors, in accordance with Section 104(a)(1) of CERCLA.

ORDER

BASED ON THE FOREGOING FINDINGS OF FACT AND EPA DETERMINATIONS, EPA AND THE SETTLING PARTIES HEREBY AGREE, AND EPA HEREBY ORDERS THAT:

Implementation

15. Subject to EPA's rights to implement its own RI/FS pursuant to Paragraphs 27 and 68, the Settling Parties shall perform the RI/FS in accordance with Attachment A (the Statement of Work or "SOW"), and with any modifications made or required by EPA pursuant to the terms of the Order to bring documents and/or deliverables prepared by the Settling Parties under this Order into conformance with the requirements of CERCLA, the SOW, modifications to the SOW, and any Work Plans prepared under this Order or the SOW, which are incorporated by reference into this Order. Upon the effective date of this Order, Settling Parties

shall commence implementation of this Order and of work required by the SOW and shall conclude implementation of such in accordance with the terms and schedules set forth in this Order, the SOW, and any approved Work Plans. The activities conducted pursuant to this Order are subject to approval by EPA pursuant to the terms of the Order. All such activities shall be deemed consistent with the NCP to the extent that the NCP is consistent with CERCLA. To the extent consistent with the NCP, such activities shall also be consistent with guidance documents referenced in the SOW.

16. If any inconsistencies between any of the above-referenced laws, regulations or guidance exist, CERCLA shall govern. If any of the above-referenced laws, regulations or guidance are amended prior to the signing of a Record of Decision for final remedial action at the Site, pursuant to the Order EPA may modify or require modification to the SOW and to any approved Work Plan or other deliverable accordingly. EPA may also, pursuant to the Order, require the Settling Parties to develop a new Work Plan or other deliverable accordingly, and the Settling Parties shall conduct all activities required by the new or modified Work Plan or other deliverable.

17. EPA may determine pursuant to the Order that additional tasks, including remedial investigatory work and/or engineering evaluations other than those specified in the SOW, are part of the RI/FS. The Settling Parties shall implement any additional tasks identified pursuant to the Order which are consistent with the NCP, to the extent the NCP is consistent with CERCLA, and

which EPA determines are necessary as part of performing the activities required under this Order. The additional tasks shall be completed in accordance with the standards, specifications, and schedule determined or approved by EPA.

Engagement of the Settling Parties' Contractor;

Designation of the Settling Parties' Project Coordinator

18. Within forty-five (45) days after the effective date of this Order, the Settling Parties shall engage a qualified contractor to perform the technical activities required under this Order. All work performed by said contractor pursuant to the Order shall be under the direction and supervision of a qualified individual with a minimum of five (5) years of direct experience in hazardous waste site investigation and cleanup. The contractor shall employ such professional staff sufficient to perform the RI/FS prior to engagement by the Settling Parties.

19. The Settling Parties shall provide written notice to EPA within seven (7) days after engaging a contractor. The notice shall include a statement that a contract of engagement has been entered into between the Settling Parties and the contractor, a statement of qualifications, and identification of project personnel including the supervising individual specified in the preceding Paragraph. The Settling Parties shall notify EPA regarding the identity and qualifications of all subcontractors as soon as each subcontractor is engaged or at least fourteen (14) days prior to the subcontractor's commencement of site work, whichever occurs first. EPA shall

have the right to disapprove, based on professional qualifications, conflicts of interest, and/or deficiencies in previous similar work, any contractor or subcontractor or other person engaged directly or indirectly by the Settling Parties to conduct work activities under this Order. Any disapproval shall be in writing within twenty-one (21) days of the Settling Parties' notice, and shall state the basis for the disapproval. In the event of disapproval, Settling Parties shall within forty-five (45) days retain an alternative contractor.

20. Within fourteen (14) days after the effective date of this Order, the Settling Parties shall designate a Project Coordinator who shall be responsible for the administration of the SOW called for by this Order and shall submit the respective Coordinator's name, address, and telephone number to EPA. Any subsequent change in the Settling Parties' Project Coordinator shall be accomplished by notifying EPA in writing at least fourteen (14) days prior to the change. The Settling Parties shall similarly designate an individual who shall be responsible for the administration of all other activities called for by the Order.

Designation of Government Coordinators

21. EPA will designate a Remedial Project Manager (RPM) for administration of its responsibilities, for oversight of the day-to-day activities conducted under the Order, and for receipt of all written matter required by the Order. In addition, EPA will designate a Geographic Section Chief (GSC) who shall have

ultimate responsibility for the approval/disapproval findings and comments on major project deliverables pursuant to Paragraph 27 of this Order. EPA will submit the name, address, and telephone number of the RPM and GSC to the Settling Parties within fourteen (14) days after the effective date of this Order. EPA shall notify the Settling Parties in advance and in writing of any subsequent changes in the RPM or GSC. Settling Parties shall not be deemed in violation of this Order to the extent any violation regarding the timeliness of a submission is caused by EPA's failure to identify its RPM or GSC or to notify Settling Parties of any changes of RPM or GSC; provided, however, that this Paragraph shall not affect in any way the Settling Parties' obligation to submit in a timely manner any submissions.

22. The RPM shall have the authority vested in the On-Scene Coordinator and the Remedial Project Manager by the National Contingency Plan, as amended, 40 C.F.R. Part 300. This includes the authority to halt, conduct, or direct any tasks required by this Order and/or any response action, or portions thereof, when conditions present an imminent and substantial endangerment to public health or welfare or the environment. Except as specifically provided under this Order or as directed in writing by the RPM, the presence of the RPM on the Site is not required for the Settling Parties to undertake actions at the Site.

Communications

23. Communications between the Settling Parties and EPA, and all documents including reports, approvals, disapprovals,

written notice, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order, shall be directed through the Settling Parties' Project Coordinator(s) and the RPM. For each deliverable document required under the SOW to be provided to EPA, one (1) camera ready original shall be submitted together with such copies as required by the RPM. All such deliverables submitted pursuant to this Order shall be sent by certified mail, return receipt requested, or by courier, to the RPM at the following address or to such other address as EPA hereafter may designate in writing:

Terrence Connelly
U.S. Environmental Protection Agency
Waste Management Division - HPS-CAN1
JFK Federal Building
Boston, MA 02203

All other documents of fewer than ten (10) pages in length may be submitted by facsimile transmission.

Observation of the Settling Parties' RI/FS Activities

24. The Settling Parties shall allow EPA's RPM, and EPA employees, agents, consultants, contractors, and authorized representatives identified, at a minimum, by organizational affiliation in advance by the RPM or GSC, to observe the Settling Parties' work at the Site in implementing the activities pursuant to this Order. The Settling Parties shall permit such persons:

- (i) to inspect and copy all records, documents, files or other writings which relate to technical data generated in performing the RI/FS or which would be available to EPA pursuant to its

authority under Section 104(e)(2) of CERCLA; (ii) to record all RI/FS field activities by means of photographic or other recording equipment; (iii) to enter and to freely move about all property on or about the Site under the Settling Parties' control and in compliance with the Health and Safety Plan for the Site; (iv) to conduct such tests as EPA may deem necessary; and (v) to verify the data submitted to EPA by the Settling Parties. In conducting such activities, EPA shall use reasonable efforts to avoid interfering materially with Settling Parties' reasonable performance of RI/FS work at the Site.

Necessity of Approval

25. No advice, guidance, suggestions or comments by EPA regarding reports, plans, specifications, schedules, or any other writing submitted by the Settling Parties shall be construed as relieving the Settling Parties of their obligations to obtain such reviews and approvals as may be required by this Order.

Submissions Requiring EPA Approval

26. All plans, deliverables, and reports identified in the Statement of Work or the EPA-approved Work Plan for submittal to EPA shall be so delivered to EPA in accordance with the schedule set forth in the Statement of Work or otherwise established under this Order. Prior to receipt of EPA approval, any submittal provided to EPA for approval shall be marked "Draft" on each page and shall include, in a prominent location in the document, the following disclaimer: "Disclaimer: This document is a DRAFT

document prepared by the Settling Parties pursuant to a government administrative order which has not received final acceptance from the U.S. Environmental Protection Agency. The opinions, findings, and conclusions expressed are those of the authors and not those of the U.S. Environmental Protection Agency." EPA shall provide reasonable notice to the Settling Parties in advance of the release of draft documents to third parties, except in the case of a release to EPA's contractors or to other governmental agencies.

27. EPA will review the deliverables required by this Order to determine whether they are consistent with the requirements of the SOW and the Order and will respond to the Settling Parties with one of four findings:

- a. Approval -- means that the Settling Parties shall proceed with the next scheduled RI/FS activity consistent with the deliverable.
- b. Approval with Conditions -- means that the Settling Parties shall proceed with the next scheduled RI/FS activity, subject to certain required modifications or conditions set forth in the EPA comments. EPA will specify a schedule for resubmitting the deliverable with the required modifications or conditions as set forth in the EPA comments ("New Specified Time"), taking into account the time required for preparation of the original deliverable, the extent of the additions or revisions necessary, and the necessity for carrying out any further field work in connection with

the additions or revisions. If the Settling Parties fail to resubmit the deliverable within the New Specified Time, EPA may order the Settling Parties to cease work on the RI/FS activity until such time as the modification is made or the condition is met.

- c. Disapproval with Modification Required -- means that the Settling Parties shall not proceed until they modify the deliverable to correct the deficiencies delineated in EPA's comments, and resubmit the deliverable for further EPA review. Modifications may be required in any originally-submitted deliverable, any portions of a deliverable, or any deliverable or portion of deliverable resubmitted to EPA. EPA will specify a schedule for resubmitting deliverables requiring modifications, taking into account the time required for preparation of the original deliverable, the extent of the additions or revisions necessary, and the necessity for carrying out any further field work in connection with the additions or revisions.
- d. Disapproval with EPA modification -- means that EPA has determined that it will modify the submission to cure any deficiencies and/or undertake the RI/FS or any portion of the RI/FS itself. EPA will provide notice prior to undertaking such modification itself. Such notice shall include a statement of reasons for the determination and a detailed explanation why Settling Parties are not permitted to cure any defects. The

Settling Parties agree to reimburse EPA pursuant to the terms of the Order for the costs of such modification or work as an oversight cost.

A finding of Approval or Approval with Conditions shall not be construed to mean that EPA concurs with all conclusions, methods, or statements in the deliverables. If a deliverable is otherwise timely submitted, neither an approval with conditions, a disapproval with modification required, nor a disapproval with EPA modification shall be deemed to be a violation of this Order for the purposes of Paragraphs 57 to 60 of this Order; provided however, that if upon resubmission the deliverable is not approved by EPA, the Settling Parties shall be deemed in violation of this Order as of the date of the resubmission.

28. Any reports, plans, specifications, schedules, and attachments or other deliverables required by this Order shall, upon approval by the GSC, be part of and be enforceable under this Order. Any delay or noncompliance with such reports, plans, specifications, schedules, and attachments or other deliverables shall be considered delay or noncompliance with requirements of this Order and may subject the Settling Parties to penalties pursuant to Paragraphs 57 and/or 58.

Monthly Progress Reports and Meetings

29. The Settling Parties shall provide monthly written progress reports (Progress Reports) to EPA. At a minimum, these Progress Reports shall describe the progress made during the preceding month by: (1) describing the actions which have been

taken toward achieving compliance with this Order; (2) summarizing all the results of sampling and tests and all other data generated by the Settling Parties' Contractor in the course of implementing this Order; (3) summarizing all payments to the Contractor to date by the Settling Parties in performing the approved Work Plan under this Order (only provide on a semi-annual basis); and (4) describing actions, data, plans, and procedures which are scheduled for the next month. The full results and any underlying documentation shall be furnished to EPA upon request. Progress Reports shall be submitted to the RPM by the fifteenth (15th) day of each month following the last day of the reporting period, beginning after the effective date of this Order. Meetings between the RPM, the Project Coordinator, and the Contractor shall be held as the RPM may require upon reasonable notice to the Project Coordinator. The Settling Parties and the Contractor engaged to perform work under this Order shall also meet with and make formal presentations to EPA at the completion of major components of the RI/FS, as specified by the RPM.

Quality Assurance/Quality Control; Health and Safety Compliance

30. While conducting all sample collection and analysis activities required by this Order, the Settling Parties shall use quality assurance, quality control, and chain of custody procedures in accordance with the SOW, and with EPA's: "Interim Guidelines and Specifications for Preparing Quality Assurance Project Plan" (December 1980, QAMS-005/80); "Data Quality

Objective Guidance" (EPA/540/G87/003 and 004); "EPA NEIC Policies and Procedures Manual" (revised November 1984, EPA 330/9-78-001-R); and subsequent amendments to such guidelines. To provide quality assurance and maintain quality control, the Settling Parties shall submit a Quality Assurance Project Plan ("QAPP") to EPA consistent with the requirements, guidance, and schedule contained in the Statement of Work. Upon EPA approval pursuant to Paragraph 27, the Settling Parties shall comply with the QAPP.

31. The Settling Parties also shall prepare a Health and Safety Plan as required and described in the Statement of Work. The accepted Health and Safety Plan shall be consistent with and implement standards promulgated by the Secretary of Labor pursuant to CERCLA and Section 6 of the Occupational Safety and Health Act of 1970.

Split Sampling

32. At the request of EPA, the Settling Parties shall provide split or duplicate samples to EPA and/or its authorized representatives of any samples collected by the Settling Parties pursuant to the implementation of this Order. Similarly, the Settling Parties shall allow such split or duplicate samples to be taken by EPA and/or its authorized representatives. The Settling Parties shall notify EPA not less than thirty (30) days in advance of any anticipated sample collection activity. Not less than fourteen (14) days in advance of sample collection, or such lesser time as approved by the RPM, the Settling Parties shall notify EPA of the sampling date, sampling media, and the

number of samples from each media, unless EPA specifies a different time period. EPA or its contractor will provide notice prior to collecting split or duplicate samples. If EPA or its contractors collect samples without affording Settling Parties an opportunity to take split or duplicate samples, EPA shall provide the Settling Parties' Project Coordinator with the validated analytical results from the samples within thirty (30) days after they become available. In conducting sampling activities, EPA shall use reasonable efforts to avoid interfering materially with Settling Parties' reasonable performance of RI/FS work at the Site.

Record Preservation

33. During the pendency of this Order and for a period of not less than six (6) years after EPA certification pursuant to Paragraph 61 of this Order, the Settling Parties shall preserve all records, documents, files or other writings which relate to technical data generated in performing the RI/FS or which would be available to EPA pursuant to its authority under Section 104(e)(2) of CERCLA, notwithstanding any document retention policy to the contrary. At the conclusion of this document retention period, the Settling Parties shall notify EPA at least ninety (90) days prior to the destruction of any such records or documents. The Settling Parties shall send such notice, accompanied by a copy of this Order, to:

Office of Regional Counsel
U.S. Environmental Protection Agency
JFK Federal Building
Boston, MA 02203
Attention: Bennington Landfill Superfund Site

Upon request by EPA, Settling Parties shall deliver to EPA any or all such records and documents or copies of any such records and documents. In the alternative, the Settling Parties may, at their option, provide such notice to EPA at any time after EPA Certification pursuant to Paragraph 61 of this Order; provided, however, that if the Settling Parties exercise such option, they shall deliver to EPA appropriately indexed microfilms or microfiches of all such records and documents.

Confidentiality Claims

34. The Settling Parties may assert a confidentiality claim, if appropriate, covering all or part of the information requested by this Order pursuant to 40 C.F.R. § 2.203(b). Such an assertion shall be adequately substantiated when it is made. Neither analytical data nor any information specified in Section 104(e)(7)(F) of CERCLA, shall be claimed as confidential by the Settling Parties. Information determined to be confidential by EPA shall be afforded the protection specified by 40 C.F.R. Part 2, Subpart B, and Section 104(e)(7) of CERCLA. If no such claim accompanies the information when it is submitted to EPA, it may be made available to the public by EPA without further notice to the Settling Parties.

Site Access

35. All Settling Parties that own, occupy, or control property at the Site, or property adjacent to the Site to which access is required in order to properly carry out the terms of this Order, shall grant access to the other Settling Parties, the Settling Parties' authorized representatives, and EPA and their officers, employees, agents, contractors, consultants, and other authorized representatives for purposes of implementing and monitoring work to be performed under this Order.

36. To the extent the Settling Parties determine that access to property at the Site, or property other than the Site, is required for the proper and complete implementation of this Order, the Settling Parties' sole obligation under this Paragraph shall be to use their best efforts to obtain agreements for access to such property within twenty-one (21) days after approval of the Work Plan or within thirty (30) days of discovery of the need for such agreement(s), whichever date is later. The Settling Parties' determination of the need for access, the proper means for obtaining access, and the Settling Parties' efforts to obtain access, shall be subject to the approval procedures set forth in Paragraph 27.

37. Such agreements to allow access obtained pursuant to the preceding paragraph shall, at a minimum, allow the Settling Parties, the Settling Parties' authorized representatives, and EPA and their officers, employees, agents, contractors, consultants, and other authorized representatives to enter freely and move about the Site and such properties in compliance with a

Health and Safety Plan at all reasonable times in order to implement and oversee the implementation of work under this Order. In the event that the Settling Parties fail to obtain any necessary access agreements within the time period specified above, the Settling Parties shall notify EPA in writing within five (5) business days thereafter. Such notification shall include a description of the efforts made by the Settling Parties to obtain the necessary access and the reason for their lack of success. The Settling Parties shall reimburse EPA, in accordance with Paragraph 48, for all costs EPA may incur in exercising its statutory authority to gain access to the Site.

Endangerment and Emergency Response

38. Upon the occurrence of any event during the RI/FS that causes a release or substantial threat of release from the Site into the environment of any pollutant, contaminant or hazardous substance which may present an imminent and substantial danger to the public health or welfare or the environment, the Settling Parties shall immediately take action consistent with the NCP to prevent, abate or minimize such release or endangerment. The Settling Parties shall also orally notify the RPM within twenty-four (24) hours, or in the event of his unavailability, shall notify within the same period the Regional Duty Officer of the Emergency Planning and Response Branch, EPA Region I, telephone (617) 223-7265. The Settling Parties shall act in accordance with all applicable provisions of the Health and Safety Plan prepared pursuant to the Statement of Work.

39. The Settling Parties shall submit a written report to EPA within five (5) days after each such event setting forth: (i) the events that have occurred; (ii) the measures taken and to be taken to mitigate any harm caused or threatened by the event; and (iii) the measures taken and to be taken to prevent the reoccurrence of such an event.

40. Regardless of whether or not such a report is made to EPA, if EPA determines that activities in compliance or noncompliance with this Order have caused a release or substantial threat of release from the Site into the environment of any pollutant, contaminant or hazardous substance which may present an imminent and substantial endangerment to the public health or welfare or to the environment, EPA may, in addition to taking any action pursuant to its reservation of rights in Paragraph 68: (i) order the Settling Parties to stop further implementation of this Order for such period of time as may be needed to abate such release or threat; and/or (ii) undertake any action not inconsistent with the NCP.

Use of Resource Conservation and Recovery Act Facilities

41. The Settling Parties shall comply with all applicable requirements of the Resource Conservation and Recovery Act (RCRA), as amended, including fulfilling the standards applicable to generators of hazardous waste found at 40 C.F.R. Part 262. In particular, this responsibility includes using and signing manifest forms for hazardous waste leaving the Site. Further, the Settling Parties must designate, in a written report to EPA,

any facilities that the Settling Parties propose to use for such off-site transfer, storage, treatment, or disposal, and EPA must approve the use of such proposed facilities prior to the shipment of hazardous substances from the Site. In the event EPA disapproves such use, EPA will provide notice, such notice to include a statement of reasons for the determination and a detailed explanation why the Settling Parties may not use such proposed facilities.

Other Laws

42. All actions required to be taken pursuant to this Order shall be undertaken in accordance with the requirements of all applicable or relevant and appropriate state and federal laws and regulations (ARARs), including CERCLA; laws relating to occupational safety and health; and other federal environmental laws in effect at the time of the signing of this Order. Other agencies, including the Occupational Safety and Health Administration (OSHA) and the Fish and Wildlife Service (F&WS), may be called upon to review the conduct of work under this Order. In the event that two (2) or more federal laws or regulations are applicable, the more stringent shall apply; provided, however, that this provision shall not limit EPA's authority under Section 121(d) of CERCLA.

Public Review of RI/FS Report

43. When EPA determines that the RI/FS required under this Order is acceptable for public review, the RI/FS shall be made

available by EPA for public comment for a period of not less than thirty (30) days. The dates and length of the public comment period shall be established by EPA. Following the public review and comment period, EPA may refer the FS Report back to the Settling Parties for revision pursuant to public comments and EPA comments pursuant to a schedule, taking into account the time required for preparation of the original FS report, the extent of the revisions necessary, and the necessity for gathering any additional data in connection with the revisions. In addition, the Settling Parties shall provide information for the Responsiveness Summary as requested by EPA pursuant to all applicable EPA guidance documents. At the request of EPA, the Settling Parties shall prepare all portions of a Draft Responsiveness Summary specified by EPA pursuant to a schedule, taking into account the volume and nature of the comments which must be addressed in the Draft Responsiveness Summary. EPA will prepare the final Responsiveness Summary for the RI/FS.

Community Relations

44. EPA shall be responsible for preparing a Community Relations Plan and conducting a community relations program. The Settling Parties and the Contractor engaged to conduct the RI/FS under this Order shall, consistent with the Community Relations Plan: (i) attend and participate in public meetings regarding the Site, to the extent specified by the RPM; (ii) prepare fact sheets concerning the Site and activities conducted under this Order for submission to the RPM; and (iii) provide timely and

appropriate responses to inquiries from the public at the request of the RPM.

Financial Assurance; Insurance

45. Within thirty (30) days after the effective date of this Order, the Settling Parties shall collectively demonstrate to EPA that they have sufficient financial resources to fund the estimated costs of work to be performed by the Settling Parties under this Order. For each such Settling Party, such assurance shall be provided in the form of either the most recent certified financial statement available or federal income tax returns for the three (3) most recent years.

46. At least seven (7) days prior to commencing any on-site work under this Order, the Settling Parties shall secure, and shall maintain for the duration of this Order, comprehensive general liability and automobile insurance with limits of three million dollars (\$3,000,000), combined single limit. The United States shall be named as an insured for all such insurance policies. Within the same time period, the Settling Parties shall provide EPA with certificates of such insurance and a copy of each insurance policy. If the Settling Parties demonstrate to EPA that any contractor or subcontractor maintains insurance equivalent to that described above or insurance covering the same risks but in a lesser amount, then the Settling Parties need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

47. For the duration of this Order, the Settling Parties shall satisfy, or shall ensure that their contractors satisfy, all applicable laws and regulations regarding worker's compensation insurance for all persons performing the work on behalf of the Settling Parties in furtherance of this Order.

Reimbursement of EPA Response and Oversight Costs

48. The Settling Parties shall reimburse the Hazardous Substances Superfund for all response costs, including oversight costs and interest, incurred after the effective date of this Order by the United States in connection with the RI/FS and this Order, including without limitation costs incurred by EPA under or in connection with a contract or arrangement between EPA and a qualified person to assist EPA in overseeing and reviewing the conduct of activities required under this Order. Reimbursable response costs shall include all direct costs related to the RI/FS and this Order and all indirect costs calculated in accordance with EPA policy, including without limitation: time and travel costs of EPA personnel regarding RI/FS activities (including access and community relations); contractor costs; costs under a cooperative agreement; costs related to discussing the interpretation of Order provisions or reviewing any report delivered pursuant to this Order; costs related to resolving disputes which arise under this Order; the costs of doing and/or redoing any of the Settling Parties' obligations under this Order; EPA, contractor, and cooperative agreement costs related to the preparation of a Baseline Risk Assessment; and any

interest that accrues from the date on which payment becomes due pursuant to Paragraph 49.

49. On no less than an annual basis, EPA will submit to the Settling Parties a bill for response costs incurred by EPA with respect to the RI/FS and this Order. Such bill will consist of the following: (1) a line-item summary of costs incurred during the preceding year, including a breakdown of costs by category (including without limitation, payroll, travel, indirect costs and contracts); (2) a brief narrative summarizing the oversight activities performed by EPA and EPA's contractors during the billing period; and (3) technical portions of monthly progress reports submitted to EPA by EPA's oversight contractors that will have been redacted to remove confidential business information as defined by 40 C.F.R. Part 2, Subpart B, and enforcement confidential information as defined pursuant to the Freedom of Information Act, 5 U.S.C. §552. The Settling Parties shall, within forty-five (45) days after receipt of each annual bill, remit a certified check payable to the Hazardous Substances Superfund for the amount of such bill. The Settling Parties shall include the name of the Site, the Site identification number, and the docket number for this Order on the check and mail the check with a cover letter to:

U.S. Environmental Protection Agency
Region I
Attn: Superfund Accounting
P.O. Box 360197 M
Pittsburgh, PA 15251

A copy of the transmittal letter and the check shall be provided simultaneously to the EPA Remedial Project Manager.

50. EPA will provide to the Settling Parties copies of the Scope of Work and Technical Work Plan regarding EPA's oversight contract(s) within thirty (30) days after such documents are finalized. EPA will further provide, on a monthly basis, technical portions of monthly progress reports and cost summaries submitted to EPA by EPA's oversight contractors that will have been redacted to remove confidential business information and enforcement confidential information.

51. If the Settling Parties dispute a bill or any portion of a bill submitted by EPA, the Settling Parties may initiate dispute resolution pursuant to the procedures of Paragraph 54; provided, however, that the Settling Parties notify EPA in writing within fourteen (14) days after receipt of the disputed bill and that the Settling Parties pay all undisputed portions of the bill in accordance with the provisions of this reimbursement section. If EPA determines, in its sole discretion, that the Settling Parties acted in good faith in invoking dispute resolution concerning response or oversight costs billed by EPA, the time for payment of the disputed portion of the bill will be extended not to exceed the time taken to resolve the dispute pursuant to the procedures and deadlines of Paragraphs 54 - 56; provided, however, that interest shall accrue on such disputed costs as if no extension of the time for repayment had been granted. In all other instances where the Settling Parties dispute an EPA bill for response costs, the time for payment of the disputed portion shall remain the original payment due date, interest shall accrue on any unpaid portion of the bill from the

original payment due date, and EPA may seek stipulated penalties or otherwise act to enforce the Settling Parties' compliance with this section and the Order. If the Settling Parties fail to raise a dispute within fourteen (14) days of their receipt of the bill, the Settling Parties remain obligated for payment of the entire amount of the bill on the original payment due date, interest shall accrue on any unpaid portion of the bill from the original payment due date, and EPA may seek stipulated penalties or otherwise act to enforce the Settling Parties' compliance with this section and the Order.

Force Majeure

52. With respect to the Settling Parties' compliance with any interim or final time deadline set forth in this Order, no stipulated penalties or other sanctions will be imposed for delay solely caused by the following which could not have been overcome by the Settling Parties' due diligence: (i) an act of God; (ii) any delay caused by the public review and comment process as provided in the Work Plan and this Order; (iii) any other cause beyond the control of the Settling Parties; provided, however, that increases in the cost of performance of the RI/FS shall not excuse such performance nor affect the applicability of the penalty provisions or other sanctions which are provided for under this Order. Such penalties and sanctions shall be avoided only if, and only to the extent that, delays solely caused by conditions specified in (i) through (iii) above materially interfered with or prevented the Settling Parties' execution of

their responsibilities during the period of such delay. The Settling Parties further agree to use their best efforts to minimize any delay which may result. The Settling Parties acknowledge that they will have the burden of justifying excuses for delay in performance under this Paragraph.

53. The Settling Parties shall orally notify the EPA RPM within forty-eight (48) hours in the event that circumstances occur which the Settling Parties assert should trigger the excuse provisions of the preceding Paragraph, and shall identify with specificity the cause of such delay and the estimated duration of such delay. Within five (5) days after the Settling Parties first become aware of such circumstances, the Settling Parties shall supply to EPA in writing an explanation of the cause(s) of any actual or expected delay or noncompliance, the anticipated duration of any delay, the measures taken and to be taken by the Settling Parties to prevent or minimize the delay or correct the noncompliance, and the timetable for implementation of such measures. Failure to notify EPA shall result in a waiver of the Settling Parties' right to assert that the delay should be excused under the terms of this section.

Dispute Resolution

54. If the Settling Parties object to any EPA notice of disapproval or decision made pursuant to this Order, including any decision which has resulted in the assessment of stipulated penalties, the Settling Parties shall notify EPA in writing of their objections within ten (10) working days of receipt of the

notice. An EPA Region I official employed at a management level higher than Geographic Section Chief shall be assigned by EPA to mediate and resolve the dispute. The designated EPA official, the EPA employee whose decision is being disputed, and the Settling Parties shall have fourteen (14) days from the receipt by EPA of the notification of objection to meet and reach agreement. If agreement cannot be reached on any issue within this fourteen (14) day period, the designated EPA official shall provide a written decision to the Settling Parties and the Settling Parties shall implement the activities required by the EPA decision beginning no later than five (5) days after receipt of the EPA decision. / If EPA determines, in its sole discretion, that the Settling Parties acted in good faith in invoking dispute resolution regarding any EPA notice of disapproval or decision other than an EPA bill for response costs, the time period to implement or complete the disputed EPA decision will be suspended during the pendency of the dispute pursuant to the procedures and deadlines of this Paragraph; provided however, that the accrual of stipulated penalties shall not be suspended by this provision. / Engagement of a dispute resolution among the parties shall not be cause for the delay of any undisputed work or any other undisputed obligations under this Order. If the decision of the designated official resolving the dispute grants any relief to the Settling Parties, then no stipulated penalties shall be due for the matter as to which such relief was granted.

55. If the Settling Parties object to an EPA decision involving a substantial modification to the Statement of Work,

the Director of the EPA Region I Waste Management Division shall mediate and resolve the dispute. The Director shall determine, in her or his sole discretion, whether the decision in fact involves a substantial modification to the Statement of Work. During the pendency of a dispute under this Paragraph, the accrual of stipulated penalties which relate to the non-performance of work required by the disputed EPA decision shall be suspended. Disputes under this Paragraph shall in all other respects be governed by Paragraphs 54 and 56.

56. In the event that the Settling Parties do not implement the activities required by the EPA decision, the EPA Regional Administrator may take such civil enforcement actions against the Settling Parties as may be provided by statutory or equitable authorities, including, but not limited to, the assessment of such civil penalties or damages as are authorized by Sections 122 and 109 of CERCLA. In such an event, EPA retains the right to perform additional studies and to conduct a partial or complete Remedial Investigation/Feasibility Study pursuant to its authority under CERCLA and to recover the costs thereof from the Settling Parties.

Stipulated Penalties for Delays in Performance

57. For each day that the Settling Parties fail to complete a major deliverable identified in the SOW or to comply with any time deadline for any major deliverable established pursuant to this Order, the Settling Parties shall pay to EPA upon demand

pursuant to Paragraph 59 the sums set forth below as stipulated penalties:

<u>Period of Failure to Comply</u>	<u>Penalty Per Day</u>
1st - 7th day	\$ 750
8th - 14th day	\$ 1500
each day thereafter	\$ 3000

Penalties shall begin to accrue on the day after performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity.

58. For each day that the Settling Parties fail to comply with any deadline established pursuant to this Order other than deadlines governed by Paragraph 57 hereto, stipulated penalties to EPA in the amount of two hundred and fifty dollars (\$250) per day shall accrue on the day after performance is due and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity; provided however, that no penalties shall be imposed under this Paragraph for failure to comply with the requirements of Paragraph 29(3).

59. Any penalty accruing under Paragraphs 57 or 58 shall be due and payable within thirty (30) days of the receipt of a written demand by EPA. Payment of such penalty shall be made by certified check payable to the Hazardous Substances Superfund, and mailed to the following address with a notation of the docket number of this Order:

Region I
U.S. Environmental Protection Agency
Attn: Superfund Accounting
P.O. Box 360197 M
Pittsburgh, PA 15251

A copy of the certified check shall be sent to the Remedial Project Manager within five (5) days of payment. The stipulated penalties set forth in this section do not preclude EPA from electing to pursue any other remedies or sanctions which may be available to EPA by reason of the Settling Parties' violation of this Order or the Settling Parties' failure or refusal to comply with any of the requirements of this Order. Such remedies and sanctions include injunctive relief, the assessment of such civil penalties or damages as are authorized by Sections 122 and 109 of CERCLA, or the performance of a federally-funded response action, and a corresponding suit for reimbursement of costs incurred by the United States.

Civil Penalties for Noncompliance

60. Violations of this Order or any portion thereof may subject the Settling Parties to civil penalties of up to \$25,000 per violation and \$25,000 for each day in which such violation continues, as provided in Sections 109 and 122 of CERCLA, 42 U.S.C. §§ 9609, 9622. The Settling Parties are further advised that they may also be subject to penalties of up to \$75,000 for each day during which a second or subsequent violation continues.

Certification of the Settling Parties'

Performance of the Work Activities

61. Within one hundred and twenty (120) days after EPA's issuance of the Record of Decision relating to this RI/FS, EPA shall determine if the Settling Parties have met all of their responsibilities under Attachment A (Statement of Work) and under the provisions of the Order, including payment of response and oversight costs and any stipulated penalties or other penalties or damages that the Settling Parties may have incurred during the course of their activities under the Order. If EPA determines that such responsibilities have been materially satisfied, EPA will certify in writing to the Settling Parties that their responsibilities under the Statement of Work, the Work Plan, and this Order have been completely and successfully discharged consistent with the NCP; provided, however, that such certification shall not cover any obligations of the Settling Parties regarding the payment of response and oversight costs and any associated stipulated penalties which were not yet billed to the Settling Parties at the time of the certification. EPA's decision regarding certification shall be subject to Dispute Resolution under Paragraph 54.

Covenant Not to Sue

62. Upon certification by EPA that the Settling Parties have completed the RI/FS in accordance with this Order, EPA covenants not to sue the Settling Parties for completion of the RI/FS related to any operable units covered by the signed Record

of Decision. EPA retains the right, in its sole discretion, to revoke the covenant not to sue and render it null and void in the event that the Settling Parties fail to fulfill their obligations regarding the payment of response and oversight costs and any associated stipulated penalties which were not yet billed to the Settling Parties at the time of the certification. Settling Parties are not released from liability, if any, for any actions taken beyond the terms of this Order regarding removals, other operable units, remedial design/remedial action of this operable unit, or activities arising pursuant to Section 121(c) of CERCLA, 42 U.S.C. § 9621(c).

Settling Parties' Denial of Liability

63. By entering into this Order, or by taking any action in accordance with it, the Settling Parties agree to be bound by all of the terms hereunder; provided, however, that the Settling Parties do not admit any of the factual allegations, findings, or legal determinations contained in the Order, including the Statement of Work (SOW), nor do Settling Parties admit liability for any purpose or admit any issues of law or fact or any responsibility for the alleged release or threat of release of any hazardous substance into the environment. The participation of any Settling Party in the Order shall not be admissible against Settling Parties in any judicial or administrative proceeding, except for an action by EPA to enforce the terms of this Order, or actions to which EPA is a party which allege

injury based on acts or omissions of Settling Parties in connection with performance under this Order. However, the terms of this Order and the participation of the Settling Parties, shall be admissible in any action brought by any Settling Party(s) to enforce any contractual obligations imposed by any agreement among them.

It is the intent of the parties hereto that neither the terms of this Order, including any allegations, finding, conclusion or determination set forth herein, nor the act of performance hereunder, shall be used against the Settling Parties as a collateral estoppel in any other proceeding with EPA except for an action by EPA to enforce the terms of this Order.

By signing and consenting to the Order, and taking actions pursuant to it, Settling Parties do not concede that the RI/FS or any other investigation at the Site is necessary to protect public health or welfare or the environment. Further, Settling Parties do not concede that an actual or threatened release of a hazardous waste or substance at the Site may present an imminent and substantial endangerment to public health or welfare or environment. Settling Parties have agreed to this Order to avoid unnecessary conflict or litigation.

Settling Parties' Reservation of Rights

64. Except as set forth in this Order, including but not limited to Paragraph 71, the Settling Parties expressly reserve all rights and defenses that each or any of them may have in law

or equity for any claim or cause of action it may have against any party including the United States, its agencies, departments, and instrumentalities. Any claim not expressly waived by the Settling Parties shall be deemed reserved.

65. Notwithstanding any obligations in this Order requiring the Settling Parties to make any records, documents, or any other materials available to EPA, nothing herein shall be construed to be a waiver of any rights a Settling Party may have to assert the attorney-client privilege or the attorney work product doctrine as to those materials. However, no analytical information or information specified in section 104(e)(7)(F) of CERCLA shall be subject to any such privilege.

Enforcement Actions Against Non-Settlers

66. It is the policy of the United States to identify potentially responsible parties who do not participate in CERCLA settlements and, subject to its non-reviewable prosecutorial discretion, to seek reimbursement of response costs not covered by settlement and/or take other appropriate action against such non-settling parties pursuant to the provisions of CERCLA.

Contribution Protection

67. With regard to claims for contribution against the Settling Parties for matters addressed in this Order, the parties hereto agree that the Settling Parties are entitled to such

protection from contribution actions or claims to the extent provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2).

EPA's Reservation of Rights

68. EPA reserves the right to bring an action against the Settling Parties under Section 107 of CERCLA for recovery of: (i) all past response costs incurred by the United States at the Site after February 9, 1991 except oversight costs paid pursuant to this Order, provided that the Settling Parties have fulfilled all of their obligations under the Cost Recovery Administrative Agreement, EPA Region I CERCLA Docket No. I-91-1094; (ii) any costs incurred in the event that EPA performs all or a portion of the RI/FS; and (iii) any future costs incurred by the United States in connection with response activities conducted under CERCLA at this Site. EPA expressly reserves any and all rights and defenses that it may have to enforce this Order against the Settling Parties, including EPA's right under this Order both to disapprove of work performed by the Settling Parties and to require that the Settling Parties perform tasks in addition to those detailed in this Order. In addition, EPA reserves the right to undertake actions under Section 104 of CERCLA, including removal and/or remedial actions, at any time and to perform any and all portions of the RI/FS which the Settling Parties fail to perform to EPA's satisfaction. Except as expressly provided herein, issuance of this Order shall not affect or limit in any way any rights which EPA may have in relation to any liabilities

or obligations which the Settling Parties or other persons may be subject to under CERCLA or other laws by virtue of any connections that the Settling Parties or those other persons have or may have had with the Site. EPA reserves any and all rights to take any enforcement action pursuant to CERCLA and/or any other available legal authority, including the right to seek injunctive relief, response costs, monetary penalties, and punitive damages for any violation of law or this Order.

69. Notwithstanding any other provision of this Order, EPA shall retain all of its information gathering, entry, inspection, and enforcement authorities and rights under CERCLA and any other applicable law, regulation, or permit.

Other Claims

70. Except as expressly provided herein, nothing in this Order shall constitute or be construed as a release or covenant not to sue regarding any claim, cause of action, or demand in law or equity against any person, firm, trust, trustee, joint venture, partnership, corporation, or other entity for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Site. Except as expressly provided herein, this Order shall not estop or limit any legal or equitable claims of the United States against the Settling Parties, their agents,

contractors, or assigns, including, but not limited to, claims related to releases of hazardous substances or other pollutants or contaminants.

71. In consideration of the entry of this Order, the Settling Parties agree not to assert any causes of action, claims, or demands against the Hazardous Substances Superfund or EPA (whether directly or as the United States) for the costs of the RI/FS or any other cost incurred pursuant to this Order. This Order does not constitute any decision on preauthorization of funds under Section 111(a)(2) of CERCLA. The Settling Parties further agree not to assert any causes of action, claims, or demands against any department or agency of the United States for costs incurred by such department or agency in performing oversight functions pursuant to a cooperative agreement with EPA.

Indemnification

72. The United States does not assume any liability by entering into this Order or by virtue of any designation of the Settling Parties as EPA's authorized representatives. The Settling Parties agree to indemnify and save and hold harmless the United States Government and its agencies, departments, agents, officers, employees, and representatives from any and all claims or causes of action arising from or on account of acts or omissions of the Settling Parties, their officers, employees, agents, servants, receivers, successors, trustees, assignees, or contractors in carrying out the activities pursuant to this

Order. This agreement to indemnify and hold harmless does not include claims or causes of action arising from or on account of acts or omissions of the United States and its agencies, departments, agents, officers, employees and representatives. The United States shall not be held out as a party to, or in any other way be held liable under, any contract entered into by the Settling Parties or by the Contractor in carrying out the activities pursuant to this Order.

Third Party Rights

73. EPA and the Settling Parties agree that Sections 113(h) and 310 of CERCLA and applicable law govern the rights, if any, of persons not parties to this Order to enforce the terms of this Order. Nothing in this Order shall be construed as creating or expanding any rights enforceable by any person not a party to this Order beyond those rights, if any, afforded them under Sections 113(h) or 310 of CERCLA or applicable law.

Waiver of Settlement Conference

74. In consideration of the communications among the Settling Parties and EPA regarding the terms of this Order prior to its issuance, Settling Parties hereby agree that there is no need for a settlement conference prior to the effective date of this Order.

Notice to the State and Federal Natural Resource Trustee

75. Pursuant to the requirements of Sections 121(f) and 104(b)(2) of CERCLA, EPA has notified the State of Vermont of the scope of the response action, the negotiations with the potentially responsible parties, and the issuance of this Order.

76. Pursuant to Section 122(j) of CERCLA, EPA has notified the Federal Natural Resource Trustees of the scope of the response action, the negotiations with the potentially responsible parties, and the issuance of this Order.

Modification of Order

77. This Order, with the exception of the Statement of Work (Attachment A) or accepted deliverables thereunder, may only be modified upon the written agreement of EPA by signature of the Regional Administrator and the Settling Parties' Project Coordinator. The Statement of Work may be modified upon signature of the Geographic Section Chief. EPA may modify accepted deliverables itself upon the signature of the Geographic Section Chief.

Separate Documents


78. This Order may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

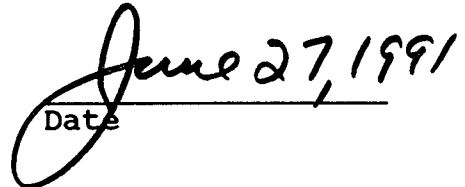
Effective Date; Computation of Time

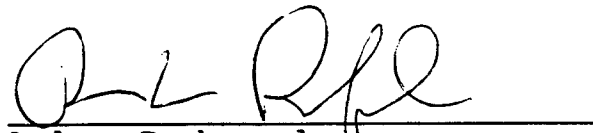
79. This Order shall be effective ten (10) days after the Order is signed by the Regional Administrator. All times for performance of activities under this Order shall be calculated from the effective date. For purposes of this Order, the term "day" shall mean a calendar day unless otherwise noted herein. When computing any period of time under this Order, if the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the next working day.

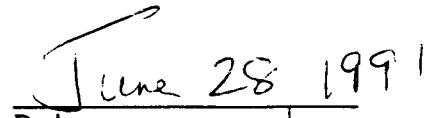
Administrative Order by Consent
EPA CERCLA Docket No. I-91-1093
Bennington Landfill Superfund Site, Bennington, Vermont

IT IS SO AGREED AND ORDERED BY:


Julie Belaga
Regional Administrator
EPA Region I


Date


Andrew Raubvogel
Assistant Regional Counsel
EPA Region I


Date

Administrative Order by Consent
EPA CERCLA Docket No. I-91-1093
Bennington Landfill Superfund Site, Bennington, Vermont

IT IS SO AGREED,

Name of Settling Party: BANNER PUBLISHING CORPORATION

By:



MARK E. ALDAM

Title:

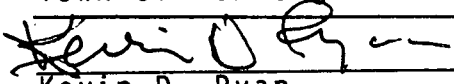
ASSISTANT TREASURER

Date:

JUNE 26, 1991

Administrative Order by Consent
EPA CERCLA Docket No. I-91-1093
Bennington Landfill Superfund Site, Bennington, Vermont

IT IS SO AGREED,

Name of Settling Party:	Town of Bennington
By:	 Kevin D. Ryan
Title:	Town Manager
Date:	June 26, 1991

Administrative Order by Consent
EPA CERCLA Docket No. I-91-1093
Bennington Landfill Superfund Site, Bennington, Vermont

IT IS SO AGREED,

Name of Settling Party: Bennington Iron Works Inc
By: Auto J. Mori
Title: President
Date: 6/26/91

Administrative Order by Consent
EPA CERCLA Docket No. I-91-1093
Bennington Landfill Superfund Site, Bennington, Vermont

IT IS SO AGREED,

Name of Settling Party:

Bayer Lubricating Corp

By:

[Signature]

Title:

President & CEO

Date:

June 26, 1991

Administrative Order by Consent
EPA CERCLA Docket No. I-91-1093
Bennington Landfill Superfund Site, Bennington, Vermont

IT IS SO AGREED,

Name of Settling Party:

Chemical Fabrics Corporation

By:

William J. Lunt

Title:

Senior Vice President

Date:

6/26/91

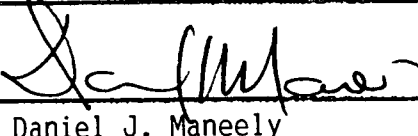
Administrative Order by Consent
EPA CERCLA Docket No. I-_____
Bennington Landfill Superfund Site, Bennington, Vermont

IT IS SO AGREED,

Name of Respondent:

Courtaulds Structural Composites Inc

By:



Daniel J. Maneely

Title:

General Manager/President

Date:

June 26, 1991

Administrative Order by Consent
EPA CERCLA Docket No. I-91-1093
Bennington Landfill Superfund Site, Bennington, Vermont

IT IS SO AGREED,

Name of Settling Party:

East Mt. Transport

By:

[Signature]

Title:

President

Date:

6/26/91

Administrative Order by Consent
EPA CERCLA Docket No. I-91-1093
Bennington Landfill Superfund Site, Bennington, Vermont

IT IS SO AGREED,

Name of Settling Party:

ENVIRONMENTAL ACTION, INC.
(NOTICED AS "ENVIRONMENTAL ACTION WASTE, INC.")

By:


WILLIAM R. APKIN

Title:

TREASURER

Date:

JUNE 26, 1991

Administrative Order by Consent
EPA CERCLA Docket No. I-91-1093
Bennington Landfill Superfund Site, Bennington, Vermont

IT IS SO AGREED,

Name of Settling Party:

EVEREADY BATTERY COMPANY, INC.

By:

Walter E. Fowler

Title:

VICE-PRESIDENT PRODUCTION

Date:

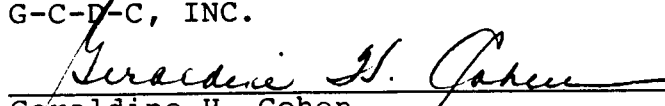
6/26/91

Administrative Order by Consent
EPA CERCLA Docket No. I-91-1093
Bennington Landfill Superfund site, Bennington, Vermont

IT IS SO AGREED,

Name of Settling Party: G-C-D-C, INC.

By:


Geraldine H. Cohen

Title: President

Date: June 26, 1991

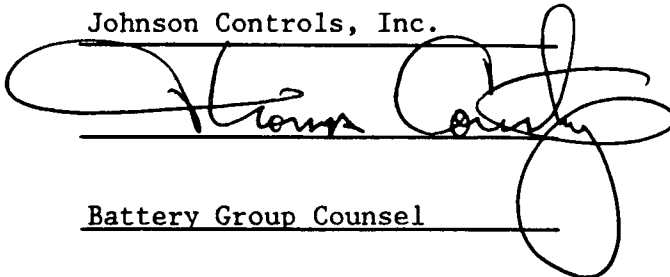
Administrative Order by Consent
EPA CERCLA Docket No. I-91-1093
Bennington Landfill Superfund Site, Bennington, Vermont

IT IS SO AGREED,

Name of Settling Party:

Johnson Controls, Inc.

By:



Title:

Battery Group Counsel

Date:

June 27, 1991

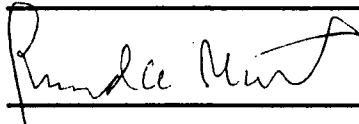
Administrative Order by Consent
EPA CERCLA Docket No. I-_____
Bennington Landfill Superfund Site, Bennington, Vermont

IT IS SO AGREED,

Name of Respondent:

Textron Inc.

By:



Title:

Richard A. McWhirter
Senior Vice President and Secretary

Date:

June 26, 1991